

**THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
ASHEVILLE DIVISION**

CRIMINAL CASE NO. 1:95-cr-00132-MR-1

UNITED STATES OF AMERICA,

vs.

MICHAEL LEROY DARITY.

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ORDER

THIS MATTER is before the Court on the Defendant's "Motion to Correct Clerical Error" [Doc. 313].

On July 7, 2009, the Hon. Lacy H. Thornburg ruled that, although the Defendant was entitled to a two-level reduction in his offense level pursuant to the Crack Cocaine Guideline Amendment, Amendment 706, such eligibility did not impact his guideline range of 360 months to life. Therefore, Defendant was not entitled to relief under §3582, and such relief was denied. [Doc. 282]. On appeal, the Fourth Circuit Court of Appeals affirmed that adjudication. United States v. Darity, 368 F. App'x 378 (4th Cir. 2010).

In August 2012, the Defendant moved for a reduction of his sentence pursuant to the Second Crack Cocaine Guideline Amendment, Amendment

750. [Doc. 306]. On May 10, 2013, that motion was also denied on the grounds that the retroactive amendment did not affect the applicable guidelines range. [Doc. 310].

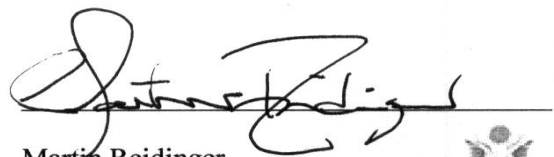
The Defendant now moves to correct a “clerical error” in the Court’s May 10, 2013 Order. Specifically, he contends that the Order erroneously stated his offense level as 42 when it should have reflected an offense level of 40, as found in the Court’s July 7, 2009 Order. [Doc. 313].

The Defendant’s motion must be denied. The Guidelines provide that in calculating an amended guidelines range, the Court is to substitute only the applicable amendments for the corresponding guidelines provisions that were applied *when the defendant was sentenced* and leave all other guidelines application decisions unaffected. U.S.S.G. § 1B1.10(b)(1). Accordingly, the Court correctly applied the Defendant’s original offense level of 42 in determining the Defendant’s eligibility for a sentencing reduction under Amendment 750.

IT IS, THEREFORE, ORDERED that the Defendant’s “Motion to Correct Clerical Error” [Doc. 313] is **DENIED**.

IT IS SO ORDERED.

Signed: December 4, 2013


Martin Reidinger
United States District Judge

